

**Senate Bill No. 124**

(By Senators Miller, Laird, Fitzsimmons and Walters)

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[Introduced February 13, 2013; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §29-21-13a of the Code of West  
Virginia, 1931, as amended; and to amend and reenact §49-6-2  
of said code, all relating to the compensation and expenses  
for attorneys appointed by circuit courts in child abuse and  
neglect proceedings.

*Be it enacted by the Legislature of West Virginia:*

That §29-21-13a of the Code of West Virginia, 1931, as  
amended, be amended and reenacted; and that §49-6-2 of said code be  
amended and reenacted, all to read as follows:

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**

**§29-21-13a. Compensation and expenses for panel attorneys.**

(a) ~~All~~ Panel attorneys shall maintain detailed and accurate  
records of the time expended and expenses incurred on behalf of  
eligible clients and upon completion of each case, exclusive of

1 appeal, shall submit to the appointing court a voucher for  
2 services. Claims for fees and expense reimbursements shall be  
3 submitted to the appointing court on forms approved by the  
4 executive director. The executive director shall establish  
5 guidelines for the submission of vouchers and claims for fees and  
6 expense reimbursements under this section. Claims submitted more  
7 than ninety calendar days after the last date of service ~~shall be~~  
8 are rejected unless, for good cause, the appointing court  
9 authorizes, in writing, an extension. ~~Provided, That~~ Claims where  
10 the last date of service occurred prior to July 1, 2008, ~~shall be~~  
11 are rejected unless submitted prior to January 2, 2009.

12       The appointing court shall review the voucher to determine if  
13 the time and expense claims are reasonable, necessary and valid and  
14 ~~shall~~ forward the voucher to the agency with an order approving  
15 payment of the claimed amount or of a lesser sum the court  
16 considers appropriate.

17       (b) Notwithstanding any other provision of this section to the  
18 contrary, Public Defender Services may pay by direct bill, prior to  
19 the completion of the case, litigation expenses incurred by  
20 attorneys appointed under this article.

21       (c) Notwithstanding any other provision of this section to the  
22 contrary, a panel attorney may be compensated for services rendered  
23 and reimbursed for expenses incurred prior to the completion of the

1 case where: (1) More than six months have expired since the  
2 commencement of the panel attorney's representation in the case;  
3 and (2) no prior payment of attorney fees has been made to the  
4 panel attorney by Public Defender Services during the case. The  
5 executive director ~~in his or her discretion,~~ may authorize periodic  
6 payments where ongoing representation extends beyond six months in  
7 duration. The amounts of ~~any~~ fees or expenses paid to the panel  
8 attorney on an interim basis, when combined with any amounts paid  
9 to the panel attorney at the conclusion of the case, ~~shall~~ may not  
10 exceed the limitations on fees and expenses imposed by this  
11 section.

12 (d) In each case in which a panel attorney provides legal  
13 representation under this article, and in each appeal after  
14 conviction in circuit court, the panel attorney shall be  
15 compensated at the following rates for actual and necessary time  
16 expended for services performed and expenses incurred subsequent to  
17 the effective date of this article:

18 (1) For attorney's work performed out of court, compensation  
19 ~~shall be at the rate of \$45 per hour~~ is \$45 per hour except that  
20 attorneys who are appointed to represent parties in child abuse and  
21 neglect proceedings under article six, chapter forty-nine of this  
22 code are compensated at the rate of \$75 per hour for work performed  
23 out of court or not attending multidisciplinary training, upon

1 certification of training required under section two, article six,  
2 chapter forty-nine of this code. For paralegal's work performed  
3 out of court for the attorney, compensation shall be at the rate of  
4 the paralegal's regular compensation on an hourly basis or, if  
5 salaried, at the hourly rate of compensation which would produce  
6 the paralegal's current salary but in no event shall the  
7 compensation exceed \$20 per hour. Out-of-court work includes, but  
8 is not limited to, travel, interviews of clients or witnesses,  
9 preparation of pleadings and prehearing or pretrial research.

10 (2) For attorney's work performed in court, compensation ~~shall~~  
11 ~~be at the rate of~~ is \$65 per hour. No compensation for paralegal's  
12 work performed in court shall be allowed. In-court work includes,  
13 but is not limited to, all time spent awaiting hearing or trial  
14 before a judge, magistrate, special master or other judicial  
15 officer. Attorneys who are appointed to represent parties in child  
16 abuse and neglect proceedings under article six, chapter forty-nine  
17 of this code are compensated at the rate of \$95 per hour for work  
18 performed in court or attending multidisciplinary training, upon  
19 certification of training required under section two, article six,  
20 chapter forty-nine of this code.

21 (3) The maximum amount of compensation for out-of-court and in-  
22 court work under this subsection is, as follows:

23 (A) For proceedings of any kind involving felonies for which

1 a penalty of life imprisonment may be imposed, the amount as the  
2 court may approve;

3 (B) For child abuse and neglect proceedings the maximum amount  
4 is \$5,000 unless the court, for good cause shown, approves payment  
5 of a larger sum;

6 (C) For all other ~~eligible proceedings, three thousand dollars~~  
7 proceedings, the maximum amount is \$3,000 unless the court, for good  
8 cause shown, approves payment of a larger sum.

9 (e) Actual and necessary expenses incurred in providing legal  
10 representation for proceedings of any kind involving felonies for  
11 which a penalty of life imprisonment may be imposed including, but  
12 not limited to, expenses for travel, transcripts, salaried or  
13 contracted investigative services and expert witnesses, ~~shall be~~ are  
14 reimbursed in an amount as the court may approve. For all other  
15 ~~eligible~~ proceedings, actual and necessary expenses incurred in  
16 providing legal representation including, but not limited to,  
17 expenses for travel, transcripts, salaried or contracted  
18 investigative services and expert witnesses, ~~shall be~~ are reimbursed  
19 to a maximum of \$1,500 unless the court, for good cause shown,  
20 approves reimbursement of a larger sum.

21 Expense vouchers shall specifically set forth the nature,  
22 amount and purpose of expenses incurred and ~~shall~~ provide receipts,  
23 invoices or other documentation required by the executive director

1 and the State Auditor:

2 (1) (A) Reimbursement of expenses for production of transcripts  
3 of proceedings reported by a court reporter is limited to the cost  
4 per original page and per copy page as set forth in section four,  
5 article seven, chapter fifty-one of this code.

6 (B) (i) There ~~shall be~~ is no reimbursement of expenses for or  
7 production of a transcript of a preliminary hearing before a  
8 magistrate or juvenile referee or of a magistrate court trial where  
9 ~~such~~ the hearing or trial has also been recorded electronically in  
10 accordance with the provisions of section eight, article five,  
11 chapter fifty of this code or court rule.

12 (ii) Reimbursement of the expense of an appearance fee for a  
13 court reporter who reports a proceeding other than one described in  
14 subparagraph (i) of this paragraph, is limited to \$25. Where a  
15 transcript of a proceeding is produced, there ~~shall be~~ is no  
16 reimbursement for the expense of any appearance fee.

17 (iii) Except for the appearance fees provided in this  
18 paragraph, there ~~shall be~~ is no reimbursement for hourly court  
19 reporters' fees or fees for other time expended by the court  
20 reporter, either at the proceeding or traveling to or from the  
21 proceeding.

22 (C) Reimbursement of the cost of transcription of tapes  
23 electronically recorded during preliminary hearings or magistrate

1 court trials is limited to \$1 per page.

2 (2) Reimbursement for ~~any~~ travel expense incurred in ~~an~~  
3 ~~eligible~~ a proceeding is limited to the rates for the reimbursement  
4 of travel expenses established by rules promulgated by the Governor  
5 pursuant to the provisions of section eleven, article eight, chapter  
6 twelve of this code and administered by the Secretary of the  
7 Department of Administration pursuant to the provisions of section  
8 forty-eight, article three, chapter five-a of this code.

9 (3) Reimbursement for investigative services is limited to a  
10 rate of \$30 per hour for work performed by an investigator.

11 (f) For purposes of compensation under this section, an appeal  
12 from magistrate court to circuit court, an appeal from a final order  
13 of the circuit court or a proceeding seeking an extraordinary remedy  
14 made to the Supreme Court of Appeals ~~shall be~~ is considered a  
15 separate case.

16 (g) Vouchers submitted under this section shall specifically  
17 set forth the nature of the service rendered, the stage of  
18 proceeding or type of hearing involved, the date and place the  
19 service was rendered and the amount of time expended in each  
20 instance. All time claimed on the vouchers shall be itemized to the  
21 nearest tenth of an hour. If the charge against the eligible client  
22 for which services were rendered is one of several charges involving  
23 multiple warrants or indictments, the voucher shall indicate the

1 fact and sufficiently identify the several charges so as to enable  
 2 the court to avoid a duplication of compensation for services  
 3 rendered. The executive director shall refuse to requisition payment  
 4 for any voucher which is not in conformity with the record keeping,  
 5 compensation or other provisions of this article or the voucher  
 6 guidelines established issued pursuant to subsection (a) of this  
 7 section and in such circumstance shall return the voucher to the  
 8 court or to the service provider for further review or correction.

9 (h) Vouchers submitted under this section after July 1, 2008,  
 10 shall be reimbursed within ninety days of receipt. Reimbursements  
 11 after ninety days shall bear interest from the ninety-first day at  
 12 the legal rate in effect for the calendar year in which payment is  
 13 due.

14 (i) Vouchers submitted for fees and expenses involving child  
 15 abuse and neglect cases shall be processed for payment before  
 16 processing vouchers submitted for all other cases.

17 **§49-6-2. Petition to court when child believed neglected or abused**

18 -- **Right to counsel; improvement period; hearing;**  
 19 **priority of proceeding; transcript.**

20 (a) In any proceeding under the provisions of this article, the  
 21 child, his or her or parents and his or her legally established  
 22 custodian or other persons standing in loco parentis to him or her  
 23 ~~shall have~~ has the right to be represented by counsel at every stage



1 of the proceedings and shall be informed by the court of their right  
2 to be ~~so~~ represented and that if they cannot pay for the services  
3 of counsel, ~~that~~ counsel will be appointed. Counsel of the child  
4 shall be appointed in the initial order. If the order gives  
5 physical custody of the child to the state, the initial order shall  
6 appoint counsel for the parents or, if the parents are separated or  
7 divorced, the parents or parent or other person or persons standing  
8 in loco parentis who had physical custody of the child for the  
9 majority of the time in the period immediately preceding the  
10 petition. ~~Provided, That such representation shall only continue~~  
11 This representation continues after the first appearance if the  
12 parent or other persons standing in loco parentis cannot pay for the  
13 services of counsel. Counsel for other parties shall only ~~be~~  
14 ~~appointed upon request for appointment of counsel.~~ be appointed  
15 counsel upon request. If the requesting parties have not retained  
16 counsel and cannot pay for the services of counsel, the court shall,  
17 by order entered of record, appoint an attorney or attorneys to  
18 represent the other party or parties and so inform the parties.  
19 Under no circumstances may the same attorney represent both the  
20 child and the other party or parties nor shall the same attorney  
21 represent both parents or custodians. ~~However,~~ One attorney may  
22 represent both parents or custodians where both parents or guardians  
23 consent to this representation after the attorney fully discloses

1 to the client the possible conflict and ~~where~~ the attorney assures  
2 the court that she or he is able to represent each client without  
3 impairing her or his professional judgment. ~~however,~~ If more than  
4 one child from a family is involved in the proceeding, one attorney  
5 may represent all the children. A parent who has been judicially  
6 determined to be battered ~~shall be~~ is entitled to his or her own  
7 attorney. ~~The court may allow to each attorney so appointed a fee~~  
8 ~~in the same amount which appointed counsel can receive in felony~~  
9 ~~cases.~~ Effective July 1, 2012, ~~any~~ an attorney appointed pursuant  
10 to this section shall receive a minimum of eight hours of continuing  
11 legal education training per reporting period on child abuse and  
12 neglect procedure and practice. In addition to this requirement,  
13 after July 1, 2013, ~~any~~ an attorney appointed to represent a child  
14 must first complete training on representation of children that is  
15 approved by the administrative office of the Supreme Court of  
16 Appeals. The Supreme Court of Appeals shall develop procedures for  
17 approval and certification of training required under this section  
18 by July 1, 2012. ~~Provided, however, That~~ Where no attorney who has  
19 completed this training is available for ~~such~~ appointment, the court  
20 shall appoint a competent attorney with demonstrated knowledge of  
21 child welfare law to represent the parent or child. ~~Any~~ An attorney  
22 appointed pursuant to this section shall perform all duties required  
23 as an attorney licensed to practice law in the State of West

1 Virginia.

2       (b) In any proceeding brought pursuant to the provisions of  
3 this article, the court may grant ~~any~~ a respondent an improvement  
4 period in accord with the provisions of this article. During ~~such~~  
5 the improvement period, the court may require temporary custody with  
6 a responsible person ~~which~~ who has been found to be a fit and proper  
7 person for the temporary custody of the child or children or the  
8 state department or other agency during the improvement period. An  
9 order granting ~~such~~ an improvement period ~~shall require~~ requires the  
10 department to prepare and submit to the court a family case plan in  
11 accordance with the provisions of section three, article six-d of  
12 this chapter.

13       (c) In any proceeding pursuant to the provisions of this  
14 article, the party or parties having custodial or other parental  
15 rights or responsibilities to the child shall be afforded a  
16 meaningful opportunity to be heard including the opportunity to  
17 testify and to present and cross-examine witnesses. The petition  
18 shall not be taken as confessed. A transcript or recording shall  
19 be made of all proceedings unless waived by all parties to the  
20 proceeding. The rules of evidence ~~shall~~ apply. Where relevant, the  
21 court shall consider the efforts of the state department to remedy  
22 the alleged circumstances. At the conclusion of the hearing, the  
23 court shall make a determination based upon the evidence and shall

1 make findings of fact and conclusions of law as to whether such  
2 child is abused or neglected and, if applicable, whether the parent,  
3 guardian, or custodian is a battered parent, all of which shall be  
4 incorporated into the order of the court. The findings must be  
5 based upon conditions existing at the time of the filing of the  
6 petition and proven by clear and convincing proof.

7 (d) ~~Any~~ A petition filed and ~~any~~ a proceeding held under the  
8 provisions of this article shall, to the extent practicable, be  
9 given priority over any other civil action before the court, except  
10 proceedings under article two-a, chapter forty-eight of this code  
11 and actions in which trial is in progress. ~~Any~~ A petition filed  
12 under the provisions of this article shall be docketed immediately  
13 upon filing. ~~Any~~ A hearing to be held at the end of an improvement  
14 period and any other hearing to be held during any proceedings under  
15 the provisions of this article, shall be held as nearly as  
16 practicable on successive days and, with respect to ~~said~~ the hearing  
17 ~~to be~~ held at the end of an improvement period, shall be held as  
18 close in time as possible after the end of ~~said~~ the improvement  
19 period and shall be held within sixty days of the termination of  
20 such improvement period.

21 (e) Following the court's determination, it shall be inquired  
22 of the parents or custodians whether ~~or not~~ an appeal is desired and  
23 the response transcribed. A negative response ~~shall not be~~

1 ~~construed as~~ is not a waiver. The evidence shall be transcribed and  
2 made available to the parties or their counsel as soon as  
3 practicable if ~~the same is~~ required for purposes of further  
4 proceedings. If an indigent person intends to pursue further  
5 proceedings, the court reporter shall furnish a transcript of the  
6 hearing without cost to the indigent person if an affidavit is filed  
7 stating that he or she cannot pay therefor.

NOTE: The purpose of this bill is to increase the hourly rate  
for attorneys who are appointed in child abuse and neglect matters.

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.